IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

WP(C).No. 1903 of 2007(B)

E.P.29/06 IN O.S.6/03 OF SUB COURT, HOSDURG

PETITIONER:

ABDUL BASHEER, S/O.BEERAN, NASEEMA MANZIL,
BEKAL PUTHIYA KADAPPURAM, PALLIKARA
KASARGOD DISTRICT

BY ADV. SRI.T.K.VIPINDAS

RESPONDENT:

C.K.VENUGOPALAN, S/O.BHARGAVAN NAYANAR,
SUDHARMA, DEVAN ROAD, BALLA VILLAGE,
P.O.KANHANGAD, KASARGOD DISTRICT

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.1903 OF 2007

Dated 16th January 2007

J U D G M E N T

For realisation of decree debt from deceased judgment debtor, respondent filed E.P.29/2006 before Sub court, Hosdurg. On the death of judgment debtor his legal heirs were impleaded as respondents 1 to 10. Case of petitioner is that though being the son of deceased he is one of the legal heirs, he was not impleaded in the execution proceedings. In the execution proceedings, the property was sold and was purchased by respondent/decree holder. Sale was confirmed. Respondent sought delivery of the property by filing E.P.29/06 before Sub court, Hosdurg. When an order for delivery was passed, this petition is filed under Article 227 of Constitution of India contending that petitioner was employed in Bombay and was unaware of the execution proceedings and is now intending to file application to set aside sale under Rule 90 of Order XXI of Code of Civil Procedure and meanwhile, if delivery is to be taken, it would cause

much hardship to petitioner. Petitioner therefore sought a direction to executing court to keep in abeyance the order for delivery for a brief period.

2. Learned counsel appearing for petitioner was heard.

3. Learned counsel submitted that petitioner being employed in Bombay was unaware of the execution proceedings or the sale or the order for delivery and petitioner is prepared to pay the entire decree debt to respondent and is also prepared to settle the dispute with the respondent and meanwhile, if delivery is ordered, it would be closing the doors for any settlement and in such circumstance, executing court may be directed to keep the order for delivery in abeyance for a short period. It was submitted by learned counsel appearing for petitioner that a petition is being moved before executing court to set aside the sale and petitioner is prepared to settle the dispute with the respondent. To enable petitioner to get proper relief from the executing court, learned Sub

Judge is directed to keep the order for delivery in abeyance for seven days from today. Petitioner may work out his remedy before the executing court.

Writ petition is disposed of accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.